

## § 1.135

## 37 CFR Ch. I (7-1-97 Edition)

months, a maximum period of six months is allowed.

(35 U.S.C. 6; 15 U.S.C. 1113, 1123)  
[47 FR 41276, Sept. 17, 1982]

### **§ 1.135 Abandonment for failure to respond within time period.**

(a) If an applicant of a patent application fails to respond within the time period provided under §§ 1.134 and 1.136, the application will become abandoned unless an Office action indicates otherwise.

(b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper action as the condition of the case may require. The admission of an amendment not responsive to the last Office action, or refusal to admit the same, and any proceedings relative thereto, shall not operate to save the application from abandonment.

(c) When action by the applicant is a bona fide attempt to respond and to advance the case to final action, and is substantially a complete response to the Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, opportunity to explain and supply the omission may be given before the question of abandonment is considered.

(35 U.S.C. 6, Pub. L. 97-247; 15 U.S.C. 1113, 1123)

[47 FR 41276, Sept. 17, 1982, as amended at 49 FR 555, Jan. 4, 1984]

### **§ 1.136 Filing of timely responses with petition and fee for extension of time and extensions of time for cause.**

(a)(1) If an applicant is required to respond within a nonstatutory or shortened statutory time period, applicant may respond up to four months after the time period set if a petition for an extension of time and the fee set in § 1.17 are filed prior to or with the response, unless:

(i) Applicant is notified otherwise in an Office action,

(ii) The response is a reply brief submitted pursuant to § 1.193(b),

(iii) The response is a request for an oral hearing submitted pursuant to § 1.194(b),

(iv) The response is to a decision by the Board of Patent Appeals and Interferences pursuant to § 1.196, 1.197 or 1.304, or

(v) The application is involved in an interference declared pursuant to § 1.611.

(2) The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for purposes of determining the period of extension and the corresponding amount of the fee. The expiration of the time period is determined by the amount of the fee paid. In no case may an applicant respond later than the maximum time period set by statute, or be granted an extension of time under paragraph (b) of this section when the provisions of this paragraph are available. See § 1.136(b) for extensions of time relating to proceedings pursuant to § 1.193(b), 1.194, 1.196 or 1.197. See § 1.304 for extension of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action. See § 1.550(c) for extension of time in reexamination proceedings and § 1.645 for extension of time in interference proceedings.

(b) When a response with petition and fee for extension of time cannot be filed pursuant to paragraph (a) of this section, the time for response will be extended only for sufficient cause, and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the applicant is due, but in no case will the mere filing of the request effect any extension. In no case can any extension carry the date on which response to an Office action is due beyond the maximum time period set by statute or be granted when the provisions of paragraph (a) of this section are available. See § 1.304 for extension of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action, § 1.645 for extension of time in interference proceedings and § 1.550(c) for extension of time in reexamination proceedings.

[54 FR 29551, July 13, 1989; 54 FR 32637, Aug. 9, 1989, as amended at 58 FR 54509, Oct. 22, 1993]